STATE OF ALASKA

IBLA 75-233 Decided April 7, 1975

Appeal from a decision (AA 5287) of the Alaska State Office, Bureau of Land Management, rejecting a State selection application.

Affirmed.

1. Act of July 7, 1958 -- Alaska: Land Grants and Selections: Generally -- Alaska Native Claims Settlement Act (December 18, 1971, 85 Stat. 688): Native Village Selections -- State Selections

   The filing of a State selection application under section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

2. Alaska: Land Grants and Selections: Generally -- Alaska Native Claims Settlement Act (December 18, 1971, 85 Stat. 688): Native Village Selections -- State Selections -- Statutory Construction: Generally

   Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), constitute an unwarranted vitiation of the State selection provisions

of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

APPEARANCES: F. J. Keenan, Director, State of Alaska, Department of Natural Resources, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The State of Alaska has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 24, 1974, rejecting State selection application AA 5287 because the Pilot Point Native Corporation selected all the land in the State selection as part of its selection under the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

The State of Alaska contends that lands selected under section 6(b) of the Alaska Statehood Act, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), prior to the passage of the Alaska Native Claims Settlement Act (ANCSA), supra, must be patented to the State of Alaska under the Statehood Act and cannot be withdrawn for, selected by and patented to a village corporation under ANCSA.

On December 27, 1968, the State of Alaska filed selection application AA 5287 under section 6(b) of the Alaska Statehood Act for all the lands in T. 30 S., R. 51 W., Seward Meridian, subject to prior valid rights, claims and patented lands. On January 11, 1972, Alaska reasserted its intention to acquire title to all open available land in the township mentioned above. On June 16, 1972, Alaska amended the selection to include all land in the township excluding patented lands.

[1] Pilot Point was certified under ANCSA as an eligible village by the Bureau of Indian Affairs on September 14, 1973, and is located in T. 30 S., R. 51 W., Seward Meridian. On January 25, 1973, the Pilot Point Native Corporation, the village corporation organized under ANCSA, selected all the available land in T. 30 S., R. 51 W., Seward Meridian, as part of its core township application AA-6692-A. The BLM decision recites, and the State of Alaska does not dispute, that this selection by Pilot Point is within the 69,120-acre entitlement afforded to the village by ANCSA, 43 U.S.C. § 1611(a)(1) (Supp. III, 1973), and the regulations, 43 CFR 2651.4(a)(1). Additionally, ANCSA provides that each eligible Native village shall select all of the township or

townships within which the village is located. 43 U.S.C. § 1611(a)(1) (Supp. III, 1973). The Village of Pilot Point lies within T. 30 S., R. 51 W., S.M. ANCSA also specifically provides that a village selection may include lands that the State of Alaska had selected under the Statehood Act. 43 U.S.C. §§ 1610(a)(1)-(2) and 1611(a)(1) (Supp. III, 1973); State of Alaska, 19 IBLA 178 (1975). More specifically, 43 CFR 2651.4(a)(1) expressly permits a Native village to select land previously selected by the State of Alaska:

> * * * Village corporations * * * may not select more than:
>
> (1) 69,120 acres from land that, prior to January 17, 1969, has been selected by or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; * * *.

The selection application is not such a right that is protected under other provisions of ANCSA from selection by a Native village. State of Alaska, supra.

[2] The State of Alaska argues that the BLM has improperly applied the Departmental regulations, resulting in an impingement upon the Compact of Admission to the Union. The answer is that ANCSA lands, although included in State selection applications, are amenable to selection by a Native village. ANCSA's provisions in 43 U.S.C. §§ 1610(a)(1) and 1611(a)(1) are a sufficient predicate for the regulations. What appellant is suggesting is that ANCSA is pro tanto an unwarranted vitiation of the Statehood Act and of the Compact.

We stated in Masonic Homes of California, 4 IBLA 23, 29-30, 78 I.D. 312, 316 (1971), as follows:

> Under Article IV, Section 3, Clause 2 of the Constitution, Congress is granted the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." In Gibson v. Chouteau, 80 U.S. (13 Wall.) 92, 99 (1872), the Supreme Court stated:
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> > That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made.

> Whether the act of 1960 * * * is a proper exercise of this power is not within the scope of our consideration.

Similarly, whether ANCSA is a proper exercise of Congressional authority is beyond the scope of this Board's authority.

Since all of the lands in State selection application AA 5287 have been properly selected by the Pilot Point Native Corporation, and are no longer available for disposition to the State of Alaska, the BLM properly rejected State selection application AA 5287.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge